

108TH CONGRESS
1ST SESSION

H. R. 1412

To provide the Secretary of Education with specific waiver authority to respond to a war or other military operation or national emergency.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 2003

Mr. KLINE (for himself, Mr. BOEHNER, Mr. GEORGE MILLER of California, Mr. McKEON, Mr. KILDEE, Mr. HOEKSTRA, Mr. FROST, Mr. SAM JOHNSON of Texas, Mr. HINOJOSA, Mr. GREENWOOD, Mr. NORWOOD, Mr. UPTON, Mr. ISAKSON, Mr. TIBERI, Mr. KELLER, Mr. OSBORNE, Mr. WILSON of South Carolina, Mr. COLE, Mr. GINGREY, Mr. GOODLATTE, Mr. HERGER, Mr. ROGERS of Michigan, and Mr. CHOCOLA) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To provide the Secretary of Education with specific waiver authority to respond to a war or other military operation or national emergency.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; FINDINGS; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Higher Education Relief Opportunities for Students Act
6 of 2003”.

7 (b) FINDINGS.—The Congress finds the following:

1 (1) There is no more important cause than that
2 of our nation’s defense.

3 (2) The United States will protect the freedom
4 and secure the safety of its citizens.

5 (3) The United States military is the finest in
6 the world and its personnel are determined to lead
7 the world in pursuit of peace.

8 (4) Hundreds of thousands of Army, Air Force,
9 Marine Corps, Navy, and Coast Guard reservists
10 and members of the National Guard have been
11 called to active duty or active service.

12 (5) The men and women of the United States
13 military put their lives on hold, leave their families,
14 jobs, and postsecondary education in order to serve
15 their country and do so with distinction.

16 (6) There is no more important cause for this
17 Congress than to support the members of the United
18 States military and provide assistance with their
19 transition into and out of active duty and active
20 service.

21 (B) REFERENCE.—References in this Act to “the
22 Act” are references to the Higher Education Act of 1965
23 (20 U.S.C. 1001 et seq.).

1 **SEC. 2. WAIVER AUTHORITY FOR RESPONSE TO MILITARY**
2 **CONTINGENCIES AND NATIONAL EMER-**
3 **GENCIES.**

4 (a) WAIVERS AND MODIFICATIONS.—

5 (1) IN GENERAL.—Notwithstanding any other
6 provision of law, unless enacted with specific ref-
7 erence to this section, the Secretary of Education
8 (referred to in this Act as the “Secretary”) may
9 waive or modify any statutory or regulatory provi-
10 sion applicable to the student financial assistance
11 programs under title IV of the Act as the Secretary
12 deems necessary in connection with a war or other
13 military operation or national emergency to provide
14 the waivers or modifications authorized by para-
15 graph (2).

16 (2) ACTIONS AUTHORIZED.—The Secretary is
17 authorized to waive or modify any provision de-
18 scribed in paragraph (1) as may be necessary to en-
19 sure that—

20 (A) recipients of student financial assist-
21 ance under title IV of the Act who are affected
22 individuals are not placed in a worse position fi-
23 nancially in relation to that financial assistance
24 because of their status as affected individuals;

25 (B) administrative requirements placed on
26 affected individuals who are recipients of stu-

1 dent financial assistance are minimized, to the
2 extent possible without impairing the integrity
3 of the student financial assistance programs, to
4 ease the burden on such students and avoid in-
5 advertent, technical violations or defaults;

6 (C) the calculation of “annual adjusted
7 family income” and “available income”, as used
8 in the determination of need for student finan-
9 cial assistance under title IV of the Act for any
10 such affected individual (and the determination
11 of such need for his or her spouse and depend-
12 ents, if applicable), may be modified to mean
13 the sums received in the first calendar year of
14 the award year for which such determination is
15 made, in order to reflect more accurately the fi-
16 nancial condition of such affected individual
17 and his or her family;

18 (D) the calculation under section
19 484B(b)(2) of the Act (20 U.S.C. 1091b(b)(2))
20 of the amount a student is required to return
21 in the case of an affected individual may be
22 modified so that no overpayment will be re-
23 quired to be returned or repaid if the institution
24 has documented (i) the student’s status as an

1 affected individual in the student's file, and (ii)
2 the amount of any overpayment discharged; and

3 (E) institutions of higher education, eligi-
4 ble lenders, guaranty agencies, and other enti-
5 ties participating in the student assistance pro-
6 grams under title IV of the Act that are located
7 in areas that are declared disaster areas by any
8 Federal, State or local official in connection
9 with a national emergency, or whose operations
10 are significantly affected by such a disaster,
11 may be granted temporary relief from require-
12 ments that are rendered infeasible or unreason-
13 able by a national emergency, including due
14 diligence requirements and reporting deadlines.

15 (b) NOTICE OF WAIVERS OR MODIFICATIONS.—

16 (1) IN GENERAL.—Notwithstanding section 437
17 of the General Education Provisions Act (20 U.S.C.
18 1232) and section 553 of title 5, United States
19 Code, the Secretary shall, by notice in the Federal
20 Register, publish the waivers or modifications of
21 statutory and regulatory provisions the Secretary
22 deems necessary to achieve the purposes of this sec-
23 tion.

24 (2) TERMS AND CONDITIONS.—The notice
25 under paragraph (1) shall include the terms and

1 conditions to be applied in lieu of such statutory and
2 regulatory provisions.

3 (3) CASE-BY-CASE BASIS.—The Secretary is not
4 required to exercise the waiver or modification au-
5 thority under this section on a case-by-case basis.

6 (c) IMPACT REPORT.—The Secretary shall, not later
7 than 15 months after first exercising any authority to
8 issue a waiver or modification under subsection (a), report
9 to the Committee on Education and the Workforce of the
10 House of Representatives and the Committee on Health,
11 Education, Labor and Pensions of the Senate on the im-
12 pact of any waivers or modifications issued pursuant to
13 subsection (a) on affected individuals and the programs
14 under title IV of the Act, and the basis for such deter-
15 mination, and include in such report the Secretary's rec-
16 ommendations for changes to the statutory or regulatory
17 provisions that were the subject of such waiver or modi-
18 fication.

19 (d) NO DELAY IN WAIVERS AND MODIFICATIONS.—
20 Sections 482(c) and 492 of the Higher Education Act of
21 1965 (20 U.S.C. 1089(c), 1098a) shall not apply to the
22 waivers and modifications authorized or required by this
23 Act.

1 **SEC. 3. TUITION REFUNDS OR CREDITS FOR MEMBERS OF**
2 **ARMED FORCES.**

3 (a) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that—

5 (1) all institutions offering postsecondary edu-
6 cation should provide a full refund to students who
7 are affected individuals for that portion of a period
8 of instruction such student was unable to complete,
9 or for which such individual did not receive academic
10 credit, because he or she was called up for active
11 duty or active service; and

12 (2) if affected individuals withdraw from a
13 course of study as a result of such active duty or ac-
14 tive service, such institutions should make every ef-
15 fort to minimize deferral of enrollment or reapplica-
16 tion requirements and should provide the greatest
17 flexibility possible with administrative deadlines re-
18 lated to those applications.

19 (b) DEFINITION OF FULL REFUND.—For purposes
20 of this section, a full refund includes a refund of required
21 tuition and fees, or a credit in a comparable amount
22 against future tuition and fees.

23 **SEC. 4. USE OF PROFESSIONAL JUDGMENT.**

24 A financial aid administrator shall be considered to
25 be making a necessary adjustment in accordance with sec-
26 tion 479A(a) of the Act if the administrator makes adjust-

1 ments with respect to the calculation of the expected stu-
2 dent or parent contribution (or both) of an affected indi-
3 vidual, and adequately documents the need for the adjust-
4 ment.

5 **SEC. 5. DEFINITIONS.**

6 In this Act:

7 (1) **ACTIVE DUTY.**—The term “active duty” has
8 the meaning given such term in section 101(d)(1) of
9 title 10, United States Code, except that such term
10 does not include active duty for training or attend-
11 ance at a service school.

12 (2) **AFFECTED INDIVIDUAL.**—The term “af-
13 fected individual” means an individual who—

14 (A) is serving on active duty during a war
15 or other military operation or national emer-
16 gency;

17 (B) is performing qualifying National
18 Guard duty during a war or other military op-
19 eration or national emergency;

20 (C) resides or is employed in an area that
21 is declared a disaster area by any Federal,
22 State, or local official in connection with a na-
23 tional emergency; or

24 (D) suffered direct economic hardship as a
25 direct result of a war or other military oper-

1 ation or national emergency, as determined by
2 the Secretary.

3 (3) MILITARY OPERATION.—The term “military
4 operation” means a contingency operation as such
5 term is defined in section 101(a)(13) of title 10,
6 United States Code.

7 (4) NATIONAL EMERGENCY.—The term “na-
8 tional emergency” means a national emergency de-
9 clared by the President of the United States.

10 (5) SERVING ON ACTIVE DUTY.—The term
11 “serving on active duty during a war or other mili-
12 tary operation or national emergency” shall include
13 service by an individual who is—

14 (A) a Reserve of an Armed Force ordered
15 to active duty under section 12301(a),
16 12301(g), 12302, 12304, or 12306 of title 10,
17 United States Code, or any retired member of
18 an Armed Force ordered to active duty under
19 section 688 of such title, for service in connec-
20 tion with a war or other military operation or
21 national emergency, regardless of the location
22 at which such active duty service is performed;
23 and

24 (B) any other member of an Armed Force
25 on active duty in connection with such war, op-

1 eration, or emergency or subsequent actions or
2 conditions who has been assigned to a duty sta-
3 tion at a location other than the location at
4 which such member is normally assigned.

5 (6) QUALIFYING NATIONAL GUARD DUTY.—The
6 term “qualifying National Guard duty during a war
7 or other military operation or national emergency”
8 means service as a member of the National Guard
9 on full-time National Guard duty (as defined in sec-
10 tion 101(d)(5) of title 10, United States Code)
11 under a call to active service authorized by the
12 President or the Secretary of Defense for a period
13 of more than 30 consecutive days under section
14 502(f) of title 32, United States Code, in connection
15 with a war, another military operation, or a national
16 emergency declared by the President and supported
17 by Federal funds.

18 **SEC. 6. TERMINATION OF AUTHORITY.**

19 The provisions of this Act shall cease to be effective
20 at the close of September 30, 2005.

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